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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 4 1997
Federal Communications Commission
Office of Secretary

In the Matter of)
)
Implementation of the) CC Docket No. 96-152
Telecommunications Act of 1996)
)
Telemessaging,)
Electronic Publishing, and)
Alarm Monitoring Services)

COMMENTS OF AMERITECH

Ameritech respectfully submits these comments in response to the First Report and Order and Further Notice of Proposed Rulemaking in the above-captioned matter.¹ In the Order, the Commission ruled that a BOC is engaged in the provision of electronic publishing "only to the extent that it controls, or has a financial interest in, the content of the information being disseminated over its basic telephone services."² In its Further Notice of Proposed Rulemaking, the Commission asks for comments on the meaning of "control" and "financial interest" in the context of electronic publishing.

With respect to the meaning of "control," the Commission asks whether an ownership interest is required or whether "control" results from the BOC merely

¹ In the Matter of Implementation of the Telecommunications Act of 1996 Telemessaging, Electronic Publishing and Alarm Monitoring Services, CC Docket No. 96-152, First Report and Order and Further Notice of Proposed Rulemaking, FCC 97-35, rel. February 7, 1997 (hereinafter "Order").

² Order at ¶242.

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having the ability, when acting as a gateway provider, to limit the types of information to which its gateway connects.³ It is Ameritech's position that "control" in this context means ownership of the content of the information being disseminated.⁴ Control of information rests with the owner of the intellectual property in that information, such as the copyright holder, not with the provider of storage, retrieval, or transmission of the information.

The ability to place a limit on the type or format of information to which a gateway connects, or otherwise manage the presentation of the information, is not "control" in the context of Section 274. Otherwise, to be a gateway service within the definition in Section 274(h)(2)(C), a service would have to connect the end-user to all information service providers of all types all over the world. This interpretation would make the gateway exception in Section 274 a nullity. Similarly, an interpretation of "control," as used in the Section 274 context, to include the ability to limit the type or format of the information to which the gateway connects would preclude a BOC operating under the gateway exception in Section 274(h)(2)(C) from being able to exclude providers of obscene materials from being reached through the BOC's gateway service. Congress did not intend this result.

³ Id. at ¶244.

⁴ For example, the requisite "control" would result from an equity interest of 10% or more in the entity that has title to the information.

With respect to the meaning of “financial interest,” Ameritech agrees with the Commission’s tentative conclusion that a BOC has a “financial interest when it owns the information or has a direct or indirect equity interest in the information being disseminated.”⁵ An example of an “indirect equity interest” would be a case where the BOC owns more than a de minimus share (i.e., 10% or more) of the entity that owns the information.

The term “financial interest” should not be interpreted to include compensation for managing and presenting the content of an information provider, such as hosting an information provider’s Internet “Web” site. The gateway exception to the electronic publishing definition does not require that the gateway function be performed by a BOC without compensation from users of the gateway service. In other words, the BOCs are not required to provide their gateway services for free. A BOC operating under the gateway exception should be allowed to receive compensation from the end-user customer and from the information service provider for whom it provides a gateway function such as storage or linkage.⁶

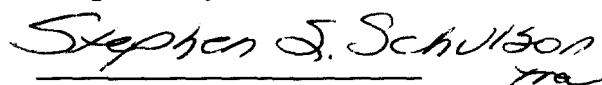
Even when the AT&T Consent Decree was in effect, BOCs were permitted under the gateway exception to the information services ban to charge

⁵ Id. at ¶245.

⁶ Similarly, Ameritech concurs in NYNEX’s conclusion that a BOC should not be considered to be engaged in electronic publishing under the 1996 Act when the BOC merely receives a transaction fee for providing access to another entity’s content or storing data for another entity and making the data available on demand. NYNEX Comments at 7.

information service providers for services the BOCs provided to them in connection with the gateway service. In 1988, Judge Greene ruled that BOCs could “lease” storage space in their gateways to information service providers and still fall within the gateway exception.⁷ Rejecting an argument that receipt of compensation from the information providers would lead to BOC discrimination in favor of such providers, Judge Greene found that this arrangement created “no significant potential for discriminatory behavior...”⁸ Since the gateway exception found in Section 274(h)(2)(C) is similar to, but broader than, the gateway waiver granted by Judge Greene in that case,⁹ BOC charges to information service providers for services provided in connection with the BOC gateway should not transform the BOC’s gateway function under Section 274(h)(2)(C) into electronic publishing.

Respectfully submitted



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⁷ United States v. Western Electric Co., 1988-1 CCH Trade Cas. ¶67,913 at 57,632. (D.D.C.)

⁸ Id. at 57,633.

⁹ See Ameritech Comments at 8-9.